

NTSB Order No. EA-4130

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of March, 1994

Docket SE-13145

by the filing of a timely appeal brief. We will grant the motion, to which respondent, by counsel, has filed a memorandum in opposition.

The record establishes that respondent filed a timely notice of appeal from the oral initial decision the law judge rendered on October 19, 1993, but he did not file an appeal brief by January 7, 1994, the date to which the deadline for filing an appeal brief had been extended by the Board, at respondent's request and with the consent of the Administrator, from its original due date.²

Counsel for respondent, whose law office is in Hawaii, asserts that he had good cause for his failure to file the appeal brief on time. Specifically, he submits, in an affidavit accompanying his memorandum, that his effort to meet the deadline, while on a business trip to the mainland, was thwarted by his inability to print out the brief from his laptop computer, "most likely due to...[his] computer not containing the correct print software for the printer which was available" (Affidavit at 3).³ While counsel appears to have identified a circumstance which would have justified a request for additional time to file the appeal brief, we do not agree that he has offered a reason that excuses his failure to seek an extension of time before the deadline expired.⁴

Nothing in counsel for respondent's opposition to the motion to dismiss establishes or suggests that he could not have filed a timely extension request once he encountered the difficulty he cites in attempting to print the brief.⁵ Consistent with

²The law judge affirmed an order of the Administrator suspending respondent's Airline Transport Pilot certificate (No. 00557493509) for 90-days for his alleged violations of sections 91.111(a), 91.113(b), and 91.13(a) of the Federal Aviation Regulations, 14 CFR Part 91.

³Counsel does not indicate who had made the printer available to him, whether he had previously attempted to ascertain whether it would be compatible with his equipment, or what efforts, if any, he made on January 7th to locate another printer after it was discovered that the available printer could not be used. The brief was filed on January 10, after counsel for respondent purchased a printer that could be used with his laptop.

⁴Counsel appears to have believed that he would be afforded additional time by the Board, without regard to when he requested it, because counsel for the Administrator, from earlier contacts, seemed disposed to consent to further extensions.

⁵Counsel for respondent seems to imply that he would have

precedent, therefore, the appeal must be dismissed for want of good cause to excuse the procedural lapse. See Administrator v. Hooper, 6 NTSB 559, 560 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above order.

(..continued)

sought an extension request on January 7th if he had known that the Administrator might seek a dismissal based on the default. In this connection it should be pointed out that even if the Administrator had not alerted the Board to the late filing, the tardiness would likely have been detected by the Board's Office of General Counsel, which would have provided respondent an opportunity to demonstrate, pursuant to our good cause standard, that the document should be accepted out of time.